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Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

RONALD DAVID ROST,

Petitioner,

v.

THE CITY OF HENDERSON, *ET AL.*,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Nevada

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Petitioner suffer abridgment of his Fourth Amendment and Fourteenth Amendment rights when a police officer unlawfully detained him for the apparent purpose of stalling for time in order to allow another officer to meet with anonymous informants and upgrade their classification to identified citizen-informants?

2. Was the investigatory stop unconstitutional for other reasons in addition to the unlawful after-the-fact identification of the anonymous informants?

3. Was the investigative stop unconstitutional when it occurred on the curtilage of the Petitioner's home without probable cause and in the absence of any reasonable exigency?

PARTIES TO THE PROCEEDING

The parties before this Court are petitioner Ronald David Rost and Respondents Shauna M. Hughes as City Attorney for the City of Henderson, Nevada and Frankie Sue Del Pappa as Attorney General for the State of Nevada.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

Municipal Court of the City of Henderson: Petitioner RONALD DAVID ROST was convicted for driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor on September 20, 1999, and sentenced on November 23, 1999 as follows: 1. Attend DUI School; 2. Attend one session of Victim Impact Panel; 3. Fine in the amount of $600.00; 4. Administrative fee of $105.00; 5. Court Fees of $10.00; 6. Two days in jail; 7. Attend outpatient counseling of one session per week for four weeks; 8. Chemical analysis fee
of $60.00.

District Court of Clark County: Petitioner filed a Petition for Writ of Habeas Corpus to the District Court of Clark County, which denied the Writ in an Order dated July 20, 2000. (See Appendix E, p. 13)

Supreme Court of the State of Nevada: Petitioner appealed the District Court's decision denying Defendant's Petition for Writ of Habeas Corpus to the Supreme Court of the State of Nevada, which upheld the denial in an Order of Affirmance dated October 12, 2000. (See Appendix C, p. 8) Petitioner filed for a Rehearing alleging that the Court misapprehended a material fact when it relied on an erroneous classification of the anonymous informants. The Nevada Supreme Court denied the Rehearing in an Order dated February 6, 2001. (See Appendix A, p.1)

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions:

1. The Fourth Amendment of the United States Constitution provides:

> Unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized.

2. Section One of the Fourteenth Amendment of the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions:

Nevada Revised Statutes § 171.123(1) provides:

> (1) Any peace office may detain any person whom the officer encounters under circumstances which reasonably indicate the person has committed, is committing or is about to commit a crime.

STATEMENT OF THE CASE

Petitioner Rost was unlawfully detained and subsequently arrested on June 10, 1999 for driving under the influence of intoxicating liquor on a public highway. Petitioner Rost was seized by the police at the driveway of his home based on information received from anonymous informants.

On June 10th of 1999, at about 9:20 in the evening, a dispatcher relayed information from anonymous informants to several police officers. The anonymous informants claimed that they were following either a white pickup or utility vehicle that was being driven in an erratic manner on a public highway. Allegedly, the informants gave dispatch the license plate number of the vehicle. One police officer drove to the Petitioner's home in an attempt to locate him.

The officer located the Petitioner parked in the driveway to his own home at 831 Harbor Beach Drive in Henderson, Nevada. The officer testified that he observed no erratic behavior by the Petitioner. Yet, the officer initiated an investigatory stop based solely on ambiguous and discrepant statements from the anonymous informants. Although the officer testified that he believed the Petitioner was intoxicated at the time of the stop, the officer did not further the investigation by conducting a field sobriety test. Importantly, the officer testified that he was holding the Petitioner for another officer. Eventually, another officer arrived at the Petitioner's home and began the field sobriety test which led to the arrest of the Petitioner.

After the first officer detained the Petitioner, a third officer met with the anonymous informants and collected a written statement. This petition focuses on the fact that the initial detention of the Petitioner was implemented merely as a stalling tactic which enabled the police to meet with

anonymous informants and upgrade their classification to identified citizen-informants.

Although the detention was short in duration, the detaining officer admitted that he was merely holding the Petitioner. Regardless of the detaining officer's motive, the detention served no legitimate investigative purpose. Throughout his protracted legal battle, the Petitioner challenged the legitimacy of the erroneous classification of the informants. However, even the Nevada Supreme Court failed to question the validity of the informant classification and the constitutionality of the detention which was implemented purely as a stalling tactic.

Therefore, the Petitioner requests relief based on the fact that no court in the State of Nevada recognized that an individual must not be detained at the curtilage of his home for no other apparent reason than to give police officers extra time to upgrade the reliability of an anonymous tip by meeting with the informants and reclassifying them as identified citizen-informants

REASONS FOR GRANTING THE PETITION

A. THE PETITIONER'S FOURTH AMENDMENT AND FOURTEENTH AMENDMENT RIGHTS WERE ABRIDGED WHEN A POLICE OFFICER UNLAWFULLY DETAINED HIM FOR THE APPARENT PURPOSE OF STALLING FOR TIME IN ORDER TO ALLOW ANOTHER OFFICER TO MEET WITH ANONYMOUS INFORMANTS AND UPGRADE THEIR TIPSTER CLASSIFICATION TO IDENTIFIED CITIZEN-INFORMANTS.

1. The Petitioner was detained prior to the identification of the anonymous informants.

Probable cause is the arrest standard, but a law enforcement officer may conduct a brief investigatory detention if a reasonable, articulable suspicion of criminal activity exists. See *Gerstein v. Pugh*, 420 U.S. 103, 111-12, 43 L. Ed. 2d 54, 95 S. Ct. 854 (1975) ("The standard for arrest is probable cause . . . ."). In *Terry v. Ohio*, 392 U.S. 1, 22-24 (1968), this Court held that based on a reasonable, articulable suspicion, a police officer can stop a person that the officer reasonably suspects is engaged in criminal activity; the officer can briefly question the suspect and perform a limited pat-down frisk for weapons. Thus, Viable government interests can warrant a brief investigatory detention on less than probable cause. *Terry*, 392 U.S. at 21.

The reasonable, articulable suspicion standard is based on information available to the officer prior to the stop. See *Florida v. J.L.*, 120 S. Ct. 1375, 1378 (2000) (finding that the "reasonableness of official suspicion must be measured by

what the officers knew before they conducted the search.")

When an officer acts on an informant's tip, the tip must be reliable in order to satisfy the reasonable, articulable suspicion standard. In *Adams*, Justice Rehnquist explained that, like other forms of evidence, informants' tips "vary greatly in their value and reliability. One simple rule will not cover every situation." *Adams v. Williams*, 407 U.S. 144, 147 (1972). Although tips vary in reliability, an anonymous tip is not imbued with credibility. See *Florida v. J.L.*, 120 S. Ct. 1375, 1381 (2000) (Kennedy, J., concurring) ("If the telephone call is truly anonymous, the informant has not placed his credibility at risk and can lie with impunity. The reviewing court cannot judge the credibility of the informant and the risk of fabrication becomes unacceptable.") Conversely, information from an identified citizen-informant is presumed reliable. See *U.S. v. Lee*, 68 F.3d 1267, 1272 (11th Cir. 1995) (information provided by informant willing to meet with police is more reliable than when informant remains anonymous)

The Petitioner's constitutional rights were violated if there is even the slightest doubt that the informants were not identified before the investigatory stop. This factor is extremely crucial due to the fact that the Nevada Supreme Court relied heavily on the allegation that the informants were identified citizen-informants. (See Appendix C, p. 10)

a. ***The record proves that the informants were anonymous at the time of the Terry stop.***

The following events prove that the Petitioner was detained prior to the identification of the informants:

(2) Sergeant Vadasy and Officer Brooks received information from dispatch at 9:20 p.m. on 6/10/99. (Appendix H, pp. 27, 87)

(3) Sergeant Vadasy initiated an investigative stop prior to the arrival of Officer Brooks. (Appendix H, p. 28)
(4) Officer Brooks arrived at 831 Harbor Place and had a conversation with Sergeant Vadasy prior to the arrest. (Appendix H, p. 28)
(5) Officer Brooks observed and spoke to Rost prior to the arrest. (Appendix H, p. 39)
(6) Officer Brooks administered a field sobriety test to Rost prior to the arrest. (Appendix H, p. 39)
(7) Officer Brooks arrested Rost at 9:35 p.m. on 6/10/99. (Appendix H, p. 84)
(8) Officer Haliday received a written statement from informant Kelly Jones at 9:30 p.m. on 6/10/99. (Appendix H, p. 82)

These events establish the fact that all the pertinent events transpired within a short 15 minute time-frame which occurred between 9:20 p.m. and 9:35 p.m. on 6/10/99. This information easily rebuts the classification of the informants. Yet, no court in the State of Nevada gave any consideration to this strong evidence negating informant classification.

b. ***The time-line proves that the informants were anonymous at the time of the Terry stop.***

The investigatory stop was made by Vadasy before the informants had a face-to-face meeting and were identified by Officer Haliday. This fact is easily proven by the trial transcript and arrest records cited above. Clearly, it would be impossible for all the documented events to occur within the five minute time-span between the time the anonymous informants came forward to be identified at 9:30 p.m. and the actual time of Rost's arrest at 9:35 p.m. This means that all of the following events occured within five minutes:

(1) The investigatory stop of Rost by Sergeant Vadasy;

(2) Sergeant Vadasy's observation of Rost's physical appearance;
(3) Sergeant Vadasy's conversation with Rost;
(4) Sergeant Vadasy's detention of Rost pending the arrival of Officer Brooks;
(5) The arrival of Officer Brooks and his conversation with Sergeant Vadasy;
(6) The observation of Rost's physical appearance by Officer Brooks;
(7) The conversation between Officer Brooks and Rost;
(8) The administering of the field sobriety test by Officer Brooks.

Working backwards from the 9:35 p.m. time of the arrest, it is obvious that Sergeant Vadasy initiated the stop prior to the 9:30 p.m. time when the informants were identified and met face-to-face with Officer Haliday. Also, there is no trial record showing that Dispatch relayed any information pertinent to this critical time-line. Thus, these facts conclusively prove that Sergeant Vadasy acted on an a tip from an anonymous informant.

c. ***The prosecution should bear the burden of proving that the anonymous informants were identified before the investigatory stop was initiated.***

The trial record fails to show that the informants were properly identified (name, address, social security number, occupation, etc.) prior to their face-to-face meeting with Officer Haliday. The prosecution never offered a time-line of the events leading up to the identification of the informants. The prosecution never produced the Dispatcher's tape to prove that the citizens were identified prior to the unlawful detention. The prosecution never used Officer Halliday or the Dispatcher to verify citizen identification in spite of the fact

that they were the only people who had any contact with the informants. Possibly, the prosecution failed to offer such evidence because it did not possess any valid evidence that would verify informant status. Regardless, no court in the State of Nevada gave reasonable consideration to Petitioner's repeated assertions that the informants were anonymous prior to the investigatory stop.

d. ***The State of Nevada imposed an implicit presumption upon the Petitioner.***

In essence, this case stands for a contortion of the judicial process in which it appears that the Petitioner was forced to rebut unsubstantiated allegations that the informants were identified before the investigatory stop. Clearly, this proposition is an abridgment of the Petitioner's constitutional rights.

e. ***The Petitioner never received the due process of law and protection from unlawful search and seizure owed to him by the City of Henderson and the State of Nevada.***

On little more than the allegations of the prosecutors, the courts of Nevada have consistently approved of a fatally defective tip classification process. Identification acquired after-the-fact is a violation of our Constitution. This detain-and-meet procedure will promulgate an unfettered abuse of police power.

There is only one essential question: What was the status of the informants prior to the investigative stop? See *Florida v. J.L.*, 120 S. Ct. 1375, 1378 (2000) (finding that the "reasonableness of official suspicion must be measured by what the officers knew before they conducted the search."). The Petitioner never received an explanation for the

questionable method in which the informants were classified because the courts of Nevada accepted the alleged classification at face value. Some fact finding was warranted in the instant case, but none was given. Thus, Petitioner's request should be granted.

2. **The detention did not serve any legitimate investigative purpose.**

The detention must be reasonably related in scope to the original investigative purpose. To be constitutional, an investigative detention "must be justified at its inception and . . . must be 'reasonably related in scope to the circumstances which justified the interference in the first place.'" *United States v. Anderson*, 114 F.3d 1059, 1063 (10th Cir. 1997) (quoting , 392 U.S. 1, 20, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)).

The investigation must proceed diligently. In determining whether police have acted diligently, courts look to whether officers pursued means of investigation likely to confirm or dispel their suspicions quickly. *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985). See, e.g., *U.S. v. Place*, 462 U.S. 696, 709-10 (1983) (detention unreasonable because police failed to act diligently and misinformed detainee as to expected course of investigation); *Peterson v. City of Plymouth*, 945 F.2d 1416, 1420 (8th Cir. 1991) (detention unreasonable because police seized suspect from front yard of home and need for immediate action was not significant)

The Petitioner's constitutional rights were violated if the detention served no legitimate purpose as evidenced by a lack of reasonable relation to the original investigative purpose and/or a lack of diligence by the police officers in confirming or dispelling suspicion.

a. ***The detaining officer was not diligent because he***

admitted that he was stalling for time.

The detaining officer admitted he was merely stalling for time. Sergeant Vadasy testified that he was holding the Petitioner pending the arrival of another officer. (See Appendix H, p. 28) The detaining officer did not declare any legitimate investigative purpose for detaining the Petitioner rather than arresting him. There is no evidence which shows that the detention was necessary in order to legitimately advance the investigation. Here, the detaining officer was merely stalling for time. Thus, the detention served no legitimate investigative purpose.

The detaining officer's motive is highly suspect. Possibly, Sergeant Vadasy might claim that he was merely holding the Petitioner for Officer Brooks because his [Vadasy's] position is more supervisory and it would inconvenience him to have to conduct the arrest on his own. (See Appendix H, p. 31) This argument fails because our constitution should never be sacrificed on the altar of convenience. Regardless of whether the detaining officer's motive was based on convenience or conspiracy, this means of investigation [stalling] was highly unlikely to further the investigative purpose.

b. ***The detaining officer was not diligent.***

Sergeant Vadasy stated that he "observed an odor of unknown alcoholic beverage" emanating from Petitioner Rost and also noticed that "he [Rost] was just swaying back and forth." (See Appendix H, p. 28) This is virtually identical to the observations made by Officer Brooks when he testified that he noticed a "moderate odor of an unknown alcoholic beverage." (See Appendix H, pp. 38-39) Thus, Vadasy testified that he observed the same behavior which prompted Brooks to conduct a field sobriety test. Yet, Vadasy did not conduct a sobriety test in spite of the fact that he made the

same observations and had the same information available to him as Officer Brooks. This fact is critical because once Vadasy had enough information to conduct the sobriety test, the investigative purpose of the subsequent detention becomes highly suspect. When Brooks arrived at the scene, Vadasy stated the following: "When Brooks arrived he began administering a field sobriety test. I explained to him what I did and what I observed up to that point, and he began administering the field sobriety test."(See Appendix H, p. 29) This proves that Vadasy had the same information available to Brooks and further proves that the sole purpose of the detention was to stall for time. Vadasy even admitted that the purpose of the detention was to stall for time when he said he was "standing by for him [Brooks]." (See Appendix H, p. 28)

Rost was detained for a purpose that was not related in scope to the original investigative purpose. Since Vadasy had the same information and made the same observations as Brooks, his subsequent failure to make the arrest indicates that the detention was not made to further any legitimate investigative purpose. Officer Brooks observed nothing new. Sergeant Vadasy conveyed his observations to Brooks and Brooks immediately conducted the field sobriety test. Since the officers admitted that the detention added nothing new to the investigation, the detention did not serve any legitimate purpose. Since the detention did not have any legitimate purpose, the detaining officer's conduct was an unlawful and unconstitutional application of an investigative stop.

c. ***The face-to-face meeting with the informants served no legitimate investigative purpose.***

In the Narrative Sheet, Officer Brooks, stated:

The citizen advised that they were behind this vehicle from S/B US 93 (Boulder Highway) across from the

> Jokers Wild Casino. They advised that the vehicle was swerving within and crossing over the travel lane. They also reported that the vehicle had almost struck the curb several times, and that it had been driven through a red traffic signal at Water Street and Lake Mead without stopping. The citizens advised that the vehicle continued on Pacific to Horizon and almost struck children that were on the side of the road. (See Appendix H, p. 87)

This information must be compared to the informants' statements in order to ascertain whether the purpose of the meeting was to further the investigation or to merely upgrade the classification of the tip.

Officer Halliday met with the informants and obtained the following written statement from Mr. Kelly Jones:

> We noticed the driver swerving all over the road at about Jokers Wild. The driver almost hit the curb several times. [T]he driver almost ran the red light at Water and Lake Mead. [T]he driver passed a car [and] almost hit kids on the side of the road. [W]e followed the driver all the way to Horizon and 95 freeway. (See Appendix H, p. 82)

When this information is compared to the Narrative Sheet, we notice that the information is virtually identical. The identical statements pertain to swerving, almost hitting the curb, almost hitting children, and the location of the traffic light. These similar statements show that Officer Halliday's sole purpose was not to further the investigation in any manner; Halliday met with the informants only to get their identification and strengthen the case against the Petitioner .

Officer Halliday did not obtain any new information when

he met with the informants. The information he obtained merely repeated what the officers collectively knew prior to the face-to-face meeting. Officer Halliday should have asked questions to clarify the crucial discrepancy over whether the Petitioner Rost ran or almost ran the red light at Water and Lake Mead. Apparently, Officer Brooks heard that Rost ran the red light from the Dispatcher because he stated that fact on the DUI Summary. (See Appendix H, p. 83) Officer Halliday should have asked questions pertaining to the informant's repeated use of the word "almost." (See Appendix H, p. 82)

A trained police officer has a duty to seek clarification when a person is detained purely on nothing more than ambiguities and discrepancies. Thus, Officer Halliday did not meet with the informants to gather any new information. Instead, he met with the informants for the sole purpose of gaining their identification and strengthening the case against the Petitioner.

3. **The detention was a de facto arrest due to the absence of a legitimate investigative purpose.**

There are "difficult line-drawing problems in distinguishing an investigative stop from a de facto arrest." *Sharpe*, 470 U.S. at 685. Here, the Petitioner was not detained for a legitimate investigative purpose; the Petitioner was detained purely to stall for time. Also, the police did not meet with the informants to gather any new information; the sole purpose of the meeting was to identify the informants and elevate the status of the tip. Once the purpose of the investigatory stop shifted from a legitimate investigative purpose to an illegitimate detaining purpose, the police conduct was functionally equivalent to an arrest and an arrest is unconstitutional in the absence of probable cause. *Dunaway v. New York*, 442 U.S. 200 (1979).

B. IN ADDITION TO THE UNLAWFUL AFTER-THE-FACT IDENTIFICATION OF THE ANONYMOUS INFORMANTS, THE INVESTIGATORY STOP WAS UNCONSTITUTIONAL FOR OTHER REASONS.

1. The stop-and-frisk exception is inapplicable because there was no valid reason for the stop.

The stop-and-frisk principles of *Terry* apply to a traffic stop if there is a valid reason for the stop and the "reasonable, articulable suspicion of criminal activity" test is met. Terry's stop-and-frisk principles are applicable to a traffic stop if there is a valid reason for the traffic stop. Traffic stops are analogous to Terry stops. *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). There must be a valid reason for the stop. See *Whren v. U.S.*, 517 U.S. 806, 810 (1996) (the Court held that an automobile may be stopped "where the police have probable cause to believe that a traffic violation has occurred.")

The valid-stop requirement must be met before an officer can invoke the lower reasonable suspicion *Terry* standard in lieu of the more stringent probable cause standard.

There was no valid reason for the stop in the instant case. The detaining officer, Sergeant Vadasy, testified that he observed no erratic driving. (See Appendix H, p. 31) Therefore, the investigatory stop was improper because Sergeant Vadasy had no reasonable basis to warrant use of the lenient *Terry* stop-and-frisk principles.

2. The anonymous tip did not gain reliability.

An anonymous tip can gain credibility prior to the investigatory stop. An anonymous tip can gain reliability if strengthened by corroboration, experience, details, predictive information, an informant facing the risk of reprisal, and an informant facing the risk of accountability. See *Florida v. J.L.*,

120 S. Ct. 1375, 1381 (2000) (Kennedy, J., concurring) However, these factors do not strengthen the reliability of a tip after the investigatory stop is implemented.

In the instant case, the anonymous tip should not gain credibility based on after-the-fact informant identification. Here, the informants were not identified until they met with an officer *after* the investigatory stop was conducted. (See Appendix H, p. 92) Nothing in the trial record indicates that the informants were identified prior to the unlawful detention of the Petitioner. Certainly, the prosecution would present such evidence if it existed. Thus, the after-the-fact identification of the informants must not be used to strengthen the reliability of an unreliable tip. See *Florida v. J.L.*, 120 S. Ct. 1375, 1378 (2000) (finding that the "reasonableness of official suspicion must be measured by what the officers knew before they conducted the search.") Therefore, this tip should be categorized and judged under the rules pertaining to anonymous tips.

Aside from the fact that the Petitioner was unlawfully detained to allow reclassification of the informants, the petitioner's cause would still prevail under following factors: corroboration, experience, details, predictive information, an informant facing the risk of reprisal, and an informant facing the risk of accountability. The risk of reprisal is inapplicable to this case. Experience is also inapplicable to this case. Thus, the following factors are relevant: the risk of accountability, a qualitative and quantitative analysis of the tip information (details and predictive information), and the subsequent verification of that information by the police officers (corroboration).

3. **Accountability should not imbue the tip with reliability under the facts of this case.**

Courts have routinely held that a tip may be sufficiently reliable tip to support a traffic stop when the informant can be held accountable because he or she gave the police identifying information such as the informant's name, address or other form of identification. See *United States v. Salazar*, 945 F.2d 47, 50-51 (2d Cir. 1991) (face-to-face informant must be thought more reliable than anonymous telephone tipster since former runs risk that he may be held accountable if information proves false).

The emphasis that courts place on informant accountability may be unwarranted because successful prosecution for perjury is unlikely and the risk of arrogation of constitutional rights is too great. See Christopher Slobogin, Testilying: Police Perjury and What To Do About It, 67 U. Colo. L. Rev. 1037, 1045 (1996) (describing how in the context of obtaining a warrant, perjury is frequently committed by affiants because they are "seldom made to pay for their lying"); *Commonwealth v. Slater*, 242 Pa. Super. 255, 363 A.2d 1257, 1259 (Pa. Super. Ct. 1976) ("The course from an informant's false statement to his conviction is a long and tortuous one. Statistically, the chances of such a prosecution are almost nonexistent.").

Accountability should not imbue the informant's tip with reliability under the facts and circumstances of this case. Petitioner cites many examples of the erroneous, conclusive, and ambiguous nature of the informants' testimony. The inconsistencies might be an innocently confused account of the actual events. Conversely, the flawed testimony may indicate a manifestation of "road-rage" in which the informants are punishing the Petitioner for some perceived wrong he committed against them as they were driving. We may never know whether the inconsistent information was caused by an innocent mistake or a malicious desire to persecute the Petitioner. Irrespective of motive, the ambiguous record and

lack of corroboration warranted a closer inquiry into the reliability of the informants in the present case. Thus, accountability is not a viable factor under the facts and circumstances of the present case.

4. <u>The tip was not sufficiently corroborated</u>.

An anonymous tip needs corroboration. See *Alabama v. White*, 496 U.S. 325, 329 (1990) (holding that a corroborated anonymous tip exhibits "sufficient indicia of reliability to provide reasonable suspicion" to make a stop) Additionally, the tip should include predictive information. See, e.g., *U.S. v. Payne*, 181 F.3d 781, 790 (6th Cir. 1999) (anonymous tip that lacked detail and prediction of future events did not provide reasonable suspicion because it could not be corroborated).

In order to be reliable, an anonymous tip must be corroborated and provide some predictive detail.

a. *The Nevada Supreme Court erred when it failed to require sufficient corroboration of the anonymous tip before it ruled against the Petitioner.*

As previously stated, the Nevada Supreme Court erroneously accepted the unsubstantiated allegation that the tip came from identified citizen-informants. (See Appendix C, p. 10) Thus, this Court should grant Petitioner's request for a Writ of Certiorari. However, even if the tip lies somewhere between the truly anonymous and identified citizen-informant categories, the Nevada Supreme Court erred because it gave no weight to the fact that some reasonable degree of corroboration was warranted because the informant's statements were ambiguous, conclusory, and unreliable.

b. *The Nevada Supreme Court accepted corroborative details at face value without giving sufficient weight to the ambiguities in the record.*

In its Order of Affirmance, the Nevada Supreme Court stated the following: "The identified citizen-informants supplied sufficient detail to support a stop and detention, and the officer satisfactorily corroborated the report." (See Appendix C, p. 10) The Nevada Supreme Court's decision included an excerpt the district court's post-conviction petition denial as follows:

> [B]ased on information concerning the make, color, and license number of the vehicle driven by Petitioner [Rost], as well as information regarding Petitioner's erratic driving which was suppled by two (2) named citizens . . . who were following Petitioner, the traffic stop conducted by the Henderson police officers was reasonable, valid, and proper. (See Appendix C, p. 9)

Once again, the Nevada Supreme Court accepted the information without considering the reliability of the source or requiring a minimal degree of corroboration.

c. ***The Nevada Supreme Court ignored numerous discrepancies and ambiguities in the trial record.***

The following excerpts illustrate that the trial record was replete with ambiguity and devoid of reasonable tip corroboration:

(1) There was a discrepancy as to whether the vehicle was a "white utility vehicle" or a "white truck" (See Appendix H, pp. 22, 24, 27, 28, 33, 55, 83)
(2) In the informant's written statement, the word "he" was scratched out and substituted with the words "the driver." Thus, the informants were unsure of the driver's gender. (See Appendix H, p. 82)
(3) The detaining officer, Sergeant Vadasy, was unable to corroborate any of the conclusory statements of the

informants pertaining to erratic driving because he observed no traffic violations during his alleged initial viewing of Petitioner Rost's vehicle. (See Appendix H, p. 31).

(4) There was a discrepancy as to whether the Petitioner ran or almost ran a red light. (See Appendix H, pp. 26, 82, 83, 87)

(6) The written statement made by Mr. Kelly Jones contains allegations that the Petitioner "almost" committed traffic violations. (See Appendix H, p. 82) The "almost" standard should not be utilized when an individual's liberty is at stake.

These examples exemplify the deficient corroboration standard that the Nevada courts used to justify denial of Rost's writ of habeas corpus petitions.

d. ***The Nevada Supreme Court erred when it failed to adequately test the tip for reliability.***

The Nevada Supreme Court erred when it failed to reasonably test the tip for corroboration. Under the *White* test, a tip requires more corroboration if the trustworthiness of the informant is unknown, but if the information comes from a known source, less corroboration is needed. *Alabama v. White*, 496 U.S. 325, 330 (1990). Even if the source is known, the *White* test clearly implicates that some degree of corroboration is necessary if there are ambiguous statements and discrepancies in the record. *White*, 496 U.S. at 330. Here, the trustworthiness of the informant is called into question by numerous discrepancies and ambiguities in the trial record. Yet, the Nevada Supreme Court failed to reasonably test the tip for reliability.

e. ***The Nevada Supreme Court erred when it failed to reasonably test for informant reliability.***

In *Kaysville City v. Mulcahy*, 943 P.2d 231, 235-36 (Utah Ct. App. 1997), the Utah Court of Appeals used the following three factors in determining the reliability and sufficiency of an informant's report:

(1) "As our first factor, we focus on the type of tip or informant involved." *Id.* at 235.

(2)The second factor we explore is whether the informant gave enough detail about the observed criminal activity to support a stop. *Id.* at 236.

(3)The final factor is whether the police officer's personal observations confirm the dispatcher's report of the informant's tip. *Id.*

In the present case, the Nevada Supreme Court used *Mulcahy* to justify its stance on the reliability of identified citizen-informants. (See Appendix C, p. 10) Yet, it is obvious that the court failed to use the *Mulcahy* test, because even a cursory glance at the record would instantly reveal the erroneous informant classification, the ambiguous record, and the lack of corroboration by the investigating officer. If the Nevada Supreme Court had used the *Mulcahy* test, the Petitioner might have been spared this protracted legal battle.

f. *The corroborative details used to deny the Petitioner's rights are not generally accepted as dispositive.*

Even if we pretend that the alleged corroborative information used against the Petitioner was not riddled with abstruseness, the fact that certain details were corroborated does not automatically engender iron-clad presumptions which endow the information with reliability and the informant with trustworthiness.

Numerous cases illustrate how corroborative information which seems sufficient can fail to meet the high evidentiary threshold necessary to satisfy the reasonable, articulable

suspicion standard. See *Olson v. Commissioner of Pub. Safety*, 371 N.W.2d 552, 555 (Minn. 1985) (Minnesota Supreme Court found tip lacked indicia of reliability when citizen informant reported a "possible drunk driver", described the vehicle, license plate number, and vehicle location, but the investigating officer observed no erratic driving); *People v. Ertl*, 686 N.E.2d 738, 745 (Ill. App. 1997) ("Though a degree of veracity or credibility would normally attach to the information provided by an identified citizen-informant, the information supplied here was based on limited and somewhat speculative observations and consisted largely of the informant's subjective fears."); *Campbell v. Department of Licensing*, 31 Wash. App. 833, 835-36, 644 P.2d 1219 (1982) (motorist drove up to a car and yelled to an officer that a drunk driver was heading southbound, and gave a description of the vehicle; tip held not reliable because it was conclusory)

Like the cases cited above, the instant case contains information which is deficient because it is conclusory, non-predictive, speculative, and subjective. Any doubt or discrepancy in informant trustworthiness should lower the high indicia of reliability normally due an identified citizen-informant. The *White* test should be used to equitably balance the interests of the government and the private individual. Here, the facts and circumstances demanded more than minimal corroboration. Thus, the Petitioner's request should be granted because he never received the minimal degree of corroboration necessary to protect his constitutional rights.

Some states demand sufficient corroboration even if the informant is identified. See *People v. Ertl*, 686 N.E.2d 738, 746 (Ill.App.1997) ("However, the mere fact that a citizen is identified will not automatically impart credibility and reliability to his statement, and courts may look to additional factors in evaluating the information.); *People v. Jones*, 196 Ill.

App. 3d 937, 956, 143 Ill. Dec. 581, 554 N.E.2d 516 (1990) (noting *Adams*; without more, statement of eyewitness citizen-informant no longer viewed as presumptively or inherently reliable); *Hood*, 262 Ill. App. 3d at 175 (noting independent verification by police of citizen-informant's information); *United States v. Spach*, 518 F.2d 866, 870 (7th Cir. 1975). ("That a person is named is not alone sufficient grounds on which to credit an informer, but it is one factor which may be weighed in determining the sufficiency of an affidavit.").

Given the ambiguity, discrepancy, and unreliability prevalent in the instant case, Petitioner Rost was owed some reasonable degree of corroboration even if this Court categorizes the informants as identified citizen-informants. Since the Nevada Supreme Court accepted the erroneous tip classification and failed to require sufficient tip corroboration, this Court should grant the Petitioner's request.

C. THE INVESTIGATIVE STOP WAS UNCONSTITUTIONAL BECAUSE THE STOP OCCURRED AT THE CURTILAGE OF THE PETITIONER'S HOME WITHOUT PROBABLE CAUSE AND IN THE ABSENCE OF ANY REASONABLE EXIGENCY.

The law recognizes a greater privacy interest in houses. See *United States v. Watson*, 423 U.S. 411, 423 (1976) (a public arrest can occur without a warrant); but see *Steagald v. United States*, 451 U.S. 204 (1981) (an arrest in a private home cannot occur without a warrant).

A warrant is needed to arrest a person in their home. In *Coolidge v. New Hampshire*, 403 U.S. 443, 459-62, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971) (plurality opinion), four members of the Court suggested that unless there was an emergency, a warrant is always needed to arrest a person in the home. Two

other members of the Court thought an exception should be made in the case of a felony, see *Id.* at 510-11 and n. 1 (concurring and dissenting opinion). In *Payton v. New York*, 445 U.S. 573, 616 (1980), even the dissenting Justices recognized that a warrantless arrest in the home was allowable only if certain conditions were met, including that the arrest be (1) in the daytime and (2) for a felony. The presumption of unreasonableness that attaches to a warrantless arrest in a private home is difficult to rebut when the government's interest is only to arrest for a minor offense. *Welsh v. Wisconsin*, 466 U.S. 740, 750-751, 104 S. Ct. 2091, 2098, 80 L. Ed. 2d 732, 743-744 (1984). Thus, a person has greater privacy protection in his home and probable cause is the operative standard as opposed to the lower threshold of reasonable suspicion.

Fourth Amendment protection extends to the curtilage of an individual's home. Fourth Amendment protection extends to the curtilage of a house. *United States v. Dunn*, 480 U.S. 294, 300, 94 L. Ed. 2d 326, 107 S. Ct. 1134 (1987); *Oliver v. United States*, 466 U.S. 170, 180, 80 L. Ed. 2d 214, 104 S. Ct. 1735 (1984). The law is well established that "[a] search warrant authorizing a search of a certain premises generally includes any vehicles located within its curtilage if the objects of the search might be located therein." *U.S. v. Gottschalk*, 915 F.2d 1459, 1461 (10th Cir. 1990); see also *U.S. v. Griffin*, 827 F.2d 1108 (7th Cir. 1987), cert. denied, 485 U.S. 909, 99 L. Ed. 2d 243, 108 S. Ct. 1085 (1988); *United States v. Asselin*, 775 F.2d 445 (1st Cir. 1985); *United States v. Bulgatz*, 693 F.2d 728 (8th Cir. 1982), cert. denied, 459 U.S. 1210, 75 L. Ed. 2d 444, 103 S. Ct. 1203 (1983); *United States v. Napoli*, 530 F.2d 1198 (5th Cir.), cert. denied, 429 U.S. 920, 50 L. Ed. 2d 287, 97 S. Ct. 316 (1976).

1. **The officer needed probable cause to infringe on the privacy of the curtilage of a home.**

Petitioner Rost was detained after his vehicle was parked in his own driveway. Sergeant Vadasy testified that he saw Rost's vehicle turn into 831 Harbor Beach [Rost's home]. (See Appendix H, p. 31) Vadasy testified that he observed Rost turning the engine off in his driveway while Vadasy was still in his police car.(See Appendix H, p. 30) Vadasy testified that he pulled into the driveway behind Rost. (See Appendix H, p. 31)

The investigatory stop was unconstitutional. When Rost pulled into his driveway, he entered the privacy of the curtilage of his home. There is nothing in the record that indicates Sergeant Vadasy flashed his lights or sounded his siren. Thus, Rost was not aware of the traffic stop until he had left the public street and entered the sanctuary of the curtilage of his home. Vadasy erroneously applied an investigatory traffic stop when the constitution demanded the heightened standard of probable cause instead of the lower threshold of reasonable suspicion. Therefore, the investigatory stop was unlawful and the Petitioner's request for a Writ of Certiorari should be granted.

2. **An investigatory traffic stop was not warranted in the instant case because the mobility factor was absent and there was no threat of danger.**

An individual has a lower expectation of the right to privacy in a mobile vehicle than in a dwelling. See *State v. Tucker*, 878 P.2d 855, 858 (Kan. App.1994) (requirements to justify a stop or search or arrest are lessened when the focus of the stop or search is a mobile automobile); *Id.* (search of a home or dwelling is seldom justified in the absence of a search warrant). The fact that a mobile vehicle is traveling on a

public highway corresponds to the lower expectation of privacy due an individual in a public place. *Watson*, 423 U.S. at 423. Removing an intoxicated driver from a public highway is warranted in order to protect the public and the driver. Thus, "when the danger to the public is clear, urgent, and immediate, the equation must be weighted in favor of protecting the public and removing the danger. *Tucker*, 878 P.2d at 861.

The vehicle was not in a mobile state and there was no threat of danger. Sergeant Vadasy testified that Petitioner Rost's vehicle was parked in his driveway. (See Appendix H, p. 30) Vadasy had no legitimate reason to invade Rost's privacy because an investigative stop should be used to prevent the danger caused by a mobile vehicle on a public highway. Thus, there was no clear, urgent, and immediate danger to the public which could justify a violation of the Petitioner's right to privacy in the curtilage of his home.

CONCLUSION

Based on the foregoing, the Petitioner respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

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